

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

SEXUAL OR PHYSICAL ASSAULT, ABUSE AND/OR NEGLECT

IHSC Directive: 03-01

ERO Directive Number: 11738.3

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By Order of the Acting Assistant Director

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- 1. PURPOSE:** The purpose of this issuance is to set forth policies and procedures for the detection and treatment of sexually or physically assaulted, abused, and/or neglected detainees (hereafter referred to as "detainees").
- 2. APPLICABILITY:** This directive applies to all Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) personnel, including but not limited to, Public Health Service (PHS) officers and federal employees supporting health care operations in ICE-owned or contracted detention facilities and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ. Federal contractors are responsible for the management and discipline of its employees supporting IHSC.

3. AUTHORITIES AND REFERENCES:

- 3-1.** Section 241(g) of the Immigration and Nationality Act, as amended (8 U.S.C. § 1231(g), Places of detention).
- 3-2.** Section 322 of the Public Health Service Act (42 U.S.C. § 249(a), Medical Care and Treatment of Quarantined and Detained Persons).
- 3-3.** ICE Directive 11062.2, Sexual Abuse and Assault Prevention and Intervention, dated 22 May 2014.
- 3-4.** DHS "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13100 (March 7, 2014).
- 3-5.** Privacy Act of 1974, 5 U.S.C. 522a, Public Law No. 93-579 (Dec. 31, 1974).
- 3-6.** DHS/ICE-013 – Alien Medical Records System of Records Notice (SORN), November 9, 2009, 74 FR 57688.

- 3-7 National PREA Resource Center. (2012). Medical and Mental Health Care Prisons and Jails, Sections 115.81, 115.82 and 115.83
- 3-8. ICE 2011 Performance Based National Detention Standards (PBNDS), Standard 2.11 Sexual Abuse and Assault Prevention and Intervention; Standard 4.3 Medical Care; Standard 4.4 Medical Care (Women).
- 3-9. ICE/DRO Residential Standard, Standard 2.7-Sexual Abuse and Assault Prevention and Intervention.

4. **POLICY:** A health care provider may detect sexual or physical assault, abuse, and/or neglect in detainees or residents (hereafter referred to as "detainees") during the intake screening process or during other clinical encounters. Facility staff will refer suspected incidents of sexual or physical assault, abuse, and/or neglect, or detainees suspected to be at high risk for victimization to a qualified health care provider at any time.

4-1 **Referral Process:** This health care provider will refer these identified detainees to a behavioral health provider (BHP) or qualified health care provider for a mental health and medical evaluation immediately. IHSC health care providers may also provide acute medical and mental health treatment prior to transfer to an appropriate facility for further emergency treatment.

4-2. **Assessing Sexual Abuse and Assault.** If the health care provider identifies the detainee upon intake (utilizing both the mental health and trauma assessment) as having a history of sexual abuse or assault prior to coming into custody (within the past six months), the detainee will be assessed and treated by one of the health care providers listed below, if indicated. The identified detainee will be referred to medical and mental health for an evaluation in accordance with PBNDS 2011 and DHS Prison Rape Elimination Act (PREA). The BHP or qualified healthcare provider evaluates the detainee within 72 hours or sooner if reasonably practicable in non-residential facilities and within 24 hours in family residential centers. Detainees who are referred to medical for a physical evaluation are evaluated no later than two working days. (NOTE: Detainees with a history of sexual abuse or victimization (within the past six months) will receive a full mental health evaluation by the BHP or physician within 60 days and appropriate follow-up will be provided, if needed.)

a. **Recommendations for "At Risk" Detainees:** Upon completion of the mental health assessment, the BHP or physician will provide a recommendation regarding alternative placement to the custody staff when appropriate. IHSC qualified health care providers and the HSA recommends that the detainee be placed in the least restrictive housing that is available, appropriate to the facility.

b. Known Abuser Mental Health Evaluation and Treatment: A BHP, or physician if no BHP is available, will attempt to conduct a mental health evaluation of all known detainee-on-detainee sexual abusers.

- (1) The BHP or physician will attempt to conduct a mental health evaluation and provide treatment within 60 days of notification of such history of abuse and/or assault.
- (2) If an evaluation is conducted, the BHP or physician will document the evaluation and ensure it is placed in the electronic health record.

4-3. Post-Incident Response: Detainees who have had a recent (within past 30days) incident, while in custody, involving sexual or physical assault, abuse or neglect, will receive a medical evaluation within two working days and mental evaluation within 72 hours.

a. Initial Evaluation: After any allegation of assault, abuse or neglect, the alleged victim is seen by a health care provider for a medical evaluation. The health care provider evaluates the detainee and, in collaboration with the Clinical Director (CD) and Health Services Administrator (HSA), refers all suspected assault, abuse or neglect to the BHP, physician, or qualified healthcare provider for a mental health evaluation. Appropriate medical and mental health interventions are conducted to meet the detainee's needs. When needed, the detainee is transferred to an outside facility for appropriate level of care and assessment. This may include a forensic medical evaluation involving the collection of evidence, using a kit approved by the proper authority, if necessary.

Victims of sexual abuse shall have timely, unimpeded access to:

- (1) Emergency medical treatment; and
- (2) Crisis intervention services including emergency contraception, Sexually transmitted infections testing, and prophylaxis.
- (3) Detainee victims of sexually abusive vaginal penetration by a male abuser while incarcerated shall be offered pregnancy tests. If pregnancy results from an instance sexual abuse, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.

- (4) Detainee victims of sexual abuse while detained will be offered tests for sexually transmitted infections, as medically appropriate.
- (5) All treatment services will be provided to the victim without financial cost, regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

- b. Forensic Examination:** Where required for evidence, or as medically appropriate and only with the detainee's consent, the IHSC health staff will arrange for an alleged detainee victim detainee to undergo a sexual assault forensic medical examination by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If a SAFE or SANE cannot be made available, the examination can be performed by other qualified health care personnel. This will be done at no cost to the detainee.
- c. Prohibition of Collection of Specimens:** Under no circumstances should IHSC health staff participate in the collection of forensic specimens or evidence. Specimens are collected only by hospital emergency department staff, or staff at designated facilities qualified to conduct sexual assault forensic medical examinations. The HSA maintains a list of local hospital emergency departments or designated facilities certified to conduct sexual assault forensic medical examinations.
 - (1) In the event physical evidence is identified during emergency treatment of a detainee abuse victim and/or abuser, an IHSC qualified health care provider will educate the detainee on how to safeguard the physical evidence. This includes informing the detainee not to take any actions that could destroy evidence, including, as appropriate, showering, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating. The HSA will also inform the AFOD of the event.
 - (2) ICE facility administrators or their designees are responsible for contacting local law enforcement to collect and catalogue physical evidence identified by IHSC personnel.
 - (3) IHSC health staff do not collect or catalogue physical evidence.

4-4. Mental Health Care. Following a medical evaluation, the need for mental health care and continued services for post-abuse assault and neglect complications are assessed by the BHP, the CD or qualified health care provider and scheduled, as needed, based on the mental health status or condition of the detainee. Off-site referrals for specialized services for victims of sexual assault or abuse are initiated, if indicated.

- 4-5. **Follow up Medical and Mental Health Care for Victims.** The appropriate health care providers, as listed previously, will provide a medical and mental health evaluation and, as appropriate, treatment for all detainees who have been victimized by sexual abuse while in ICE detention.
- 4-6. **Continuity of Care.** In accordance with professionally accepted standards of care, the evaluation and the treatment of such detainee victims will include, as appropriate, follow-up services, treatment plans, and when necessary, referrals for continued care following their transfer to or placement in other facilities, or their release from custody
- 4-7. **Refusals.** If a detainee refuses to be seen by medical and mental health for an evaluation related to the PREA allegation, a refusal form must be signed. Before the detainee signs the refusal form, the health care provider must explain the importance of having these evaluations in relationship to the allegation. After the refusal form is signed, the health care provider will make the detainee aware of the opportunity to have these evaluations completed in the future if so desired either by accessing the sick call process or appointment.
- 4-8. **Reporting Requirements.** The HSA is responsible for urgently notifying the AFOD, the facility's administrator, and the appropriate IHSC chain of command if any indications of neglect or abuse are discovered.
 - (a) The HSA also ensures an Incident Reporting Document (IHSC-010) is completed and submitted, in accordance with IHSC directive, *11-06: Time Frame for Submitting Medical Incident Reports*, to the IHSC Medical Quality Management Unit if the sexual assault allegation/incident occurred within the facility.
 - (b) In family residential centers, when a detainee is alleged to be the perpetrator, the facility administrator refers the allegation to the appropriate law enforcement agency having jurisdiction and reports it to ICE through the SEN (Significant Event Notice) system. (See IHSC directive *01-25 SEN Reporting* for more information.) In addition, ICE personnel will report all allegations of suspected child abuse to child protective services immediately.
 - (c) The Behavioral Health Unit (BHU) at HQ will request the medical and mental health evaluation from the HSA or Field Medical Coordinators (FMCs) after receiving notification of the alleged sexual assault.

(d) The FMCs will educate and assure that all ICE contract detention facilities in their respective areas of responsibility (AORS) are following their applicable PBNDS requirements as it relates to PREA.

4-9. Housing Assignments: A report is made to the correctional authorities to effect a separation of the victim from the assailant in their housing assignments.

4-10. Confidentiality of Information: Information regarding a detainee victim's possible sexual abuse, assault, and/or neglect is maintained by all of ICE personnel in accordance with applicable law and DHS policy. Information is kept in the highest confidence. Release of information regarding sexual assault or abuse must be approved by the HSA or designee and is provided only to those ICE or IHSC staff on a need- to-know basis or to support ongoing treatment of the detainee.

4-11. COMMUNITY-BASED SUPPORT: The HSA maintains a list and, when applicable, a copy of all Memorandum of Agreement (MOA) entered into by the AFOD of community-based organizations and resources related to sexual assault crisis intervention and counseling services that provide support to victims of sexual assault.

5. TRAINING AND SUPPORT: IHSC has a zero tolerance policy for sexual or physical assault, abuse, and sexual harassment. All IHSC staff will be trained on the Sexual Abuse and Assault Prevention and Intervention (SAAPI) directive, PREA standards, and response protocol during initial orientation and annually thereafter throughout their employment with IHSC.

5-1. Training: The HSA/AHSA, local training coordinator, or other designated IHSC staff member will document all required training. This training will include:

- (a) Defining and providing examples of prohibited and illegal sexual behavior, recognizing situations where sexual abuse may occur.
- (b) Detection and treatment of physically or sexually abused and assaulted detainee victims in ICE custody.
- (c) Intervening appropriately when an incident occurs.
- (d) Describing how to respond effectively and professionally to detainee victims of physical or sexual abuse and assault; recognizing physical, behavioral, and emotional signs of physical or sexual abuse.
- (e) Determining how to communicate effectively and professionally with detainee victims including lesbian, gay and

bisexual, transgender, intersex (LGBTI) or gender nonconforming detainee victims.

- (f) Identifying actions that will assist detainee victims to safeguard physical evidence of sexual abuse and assault.
- (g) Identifying the steps for reporting allegations or suspicions of sexual abuse and assault. IHSC staff will not suffer retaliation for reporting abuse or assaults.
- (h) Training security staff on how to conduct “cross gender” pat down searches and searches of transgender and intersex detainees in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
- (i) Training conducted by law enforcement personnel (designated by the AFOD) on identifying and protecting physical evidence.

5-2. Assistance to Security Training: The HSA is responsible for designating a facility staff officer to assist with the development of medical aspects of the facility’s zero tolerance and prevention of sexual assault and abuse training program.

6. HISTORICAL NOTES: This directive replaces IHSC Directive Number: 03-01, dated 1 Dec 2015. It makes changes to 4, 4-1, 4-2, 4-3, 4-4; added 4-6 Refusals; moved Reportign Requirements to 4-7 and added information; added 4-8 Housing Assignments; moved Confidentiality of Information to 4-9; added 4-10; and added 5-2. Definitions also added.

7. DEFINITIONS:

Behavioral Health Providers. Behavioral health providers are psychiatrists, clinical psychologists, independently licensed social workers, psychiatric nurse practitioners or any other behavioral health professional who, by virtue of their license, education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

Health Care Personnel or Providers. Health care personnel or providers are credentialed individuals employed, detailed, or authorized by IHSC to deliver health care services to detainees. It includes federal and contract staff assigned or detailed (i.e. temporary duty) who provide professional or paraprofessional health care services as part of their IHSC duties. (IHSC Operational Definition)

Health Staff. Health staff includes all health care professionals (including contracted staff) as well as administrative and supervisory staff at *IHSC staffed medical clinics*. (IHSC Operational Definition)

Medical Providers. Medical providers include physicians, physician assistants, nurse practitioners, and clinical pharmacists. (IHSC Operational Definition)

Mid-Level Providers. Mid-level providers are nurse practitioners (NPs) and physician assistants (PAs). (IHSC Operational Definition)

Nursing Staff. Nursing staff, within IHSC, are registered nurses (RNs), licensed practical nurses (LPNs), and licensed vocational nurses (LVNs). (IHSC Operational Definition)

Qualified Health Care Professionals. PBNDS 2011 includes the following practitioners in this category: physicians, physician assistants, nurses, nurse practitioners, or others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients. (PBNDS 2011 Glossary)

8. APPLICABLE STANDARDS:

8-1. Performance Based National Detention Standards (PBNDS):

- a. 2.11, *Sexual Abuse and Assault Prevention and Intervention*.
- b. 4.3, *Medical Care*.

8-2. American Correctional Association (ACA):

- a. Performance-Based Standards for Adult Local Detention Facilities, 4th edition.
 - (1) 4-ALDF-4C-22 and 4-ALDF-4C-23, *Health Screens*
- b. Performance-Based Standards for Correctional Health Care in Adult Correctional Institutions.
 - (1) 1-HC-1A-19
 - (2) 1-HC-1A-20

8-3. National Commission on Correctional Health Care (NCCHC): Standards for Health Services in Jails, 2014.

- a. J-E-02, *Receiving Screening*
- b. J-E-04, *Initial Health Assessment*
- c. J-B-05, *Response to Sexual Abuse*

8.4. ICE/DRO Family Residential Standard

- a. *Sexual Abuse and Assault Prevention and Intervention*, section J 1.

9. PRIVACY AND RECORDKEEPING. IHSC stores, retrieves, accesses, retains, and disposes of these records in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Fed. Reg. 239 (January 5, 2015).

Protection of Medical Records and Sensitive Personally Identifiable Information (PII).

- 9-1.** Medical records, whether electronic or paper, may only be disclosed to or accessed by those officers and employees of the agency which maintain the record who have a need for the record in the performance of their duties. Paper records must be secured at all times within a locked cabinet or room when not under the direct control of an officer or employee of the agency with a need for the record in the performance of their duties.
- 9-2.** Staff is trained at orientation and annually on the protection of patient medical information and Sensitive PII.
- 9-3.** Staff references the Department of Homeland Security *Handbook for Safeguarding Sensitive Personally Identifiable Information* (March 2012) at: (b)(7)(E) when additional information is needed concerning safeguarding Sensitive PII.

10. NO PRIVATE RIGHT STATEMENT. This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.